APPENDIX.

Constitutional Provisions, Treaties and Statutes.

Constitution:

Fifth Amendment.

No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *

Fourteenth Amendment.

No state shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws * * *.

Treaties:

The Reciprocal Commercial Trade Agreement between the United States and the Kingdom of Sweden, 49 Stat. (Part 2), 3755:

Article VI.—Articles the growth, produce or manufacture of the United States of America or Sweden, shall, after importation into the other country, be exempt from all internal taxes, fees, charges, or exactions, other or higher than those payable on Like Articles of national origin or any other foreign origin.

Statutes:

The Organic Act of Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951, 48 USCA 737, as amended by the Act of March 4, 1927, c. 503, Section 1, 44 Stat. 1418, 48 USCA 741(a):

Section 2.—That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protections of the laws.

That the rule of taxation in Puerto Rico shall be uniform:

Section 3.—* * * AND IT IS FURTHER PROVIDED, That the internal revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island; PROVIDED, That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico * * *.

Puerto Rican Act #146, approved May 9, 1938 (Laws of 1938, p. 325):

AN ACT.—TO AMEND SUBDIVISION 7 OF SECTION 16 OF ACT NO. 85, ENTITLED "AN ACT TO PROVIDE REVENUES FOR THE PEOPLE OF PORTO RICO BY LEVYING CERTAIN SALE TAXES AND TAXES FOR THE MANUFACTURE, USE, SALE AND CONSUMPTION OF CERTAIN PRODUCTS AND BY THE LEVYING OF CERTAIN EXCISE AND LICENSE TAXES ON CERTAIN OCCUPATIONS, INDUSTRIES OR BUSINESSES; TO IMPOSE CERTAIN PENALTIES; TO REPEAL THE LAWS IN FORCE PROVIDING FOR EXCISE AND LICENSE TAXES, AND FOR OTHER PURPOSES," APPROVED AUGUST 20, 1925, AS AMENDED BY ACT NO. 10, OF JULY 16, 1926; ACT NO. 17, OF JULY 3, 1927; ACT NO. 18, OF APRIL 19, 1928; ACT NO. 36, OF APRIL 23, 1928; ACT NO. 74, OF MAY 6, 1930; ACT NO. 83, OF MAY 6, 1931; ACT NO. 84, OF MAY 7, 1931; ACT NO. 89, OF MAY 11, 1931; ACT NO. 18, OF APRIL 25, 1932; ACT NO. 11, OF JULY 21, 1932; JOINT RESOLUTION NO. 13 OF APRIL 18, 1933, ACT NO. 11, OF AUGUST 22, 1933 AND ACT NO. 108, OF MAY 15, 1936, AND FOR OTHER PURPOSES.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Subdivision 7 of Section 16 of Act No. 85, entitled "An Act to provide revenues for The People of Porto Rico by levying certain sale taxes and taxes for the manufacture, use, sale and consumption of certain products and by the levying of certain excise and license taxes on certain occupations, industries or businesses; to impose cer-

tain penalties; to repeal the laws in force providing for excise and license taxes, and for other purposes," approved August 20, 1925, as amended by Act No. 10, of July 16, 1926; Act No. 17, of July 3, 1927; Act No. 18, of April 19, 1928; Act No. 36, of April 23, 1928; Act No. 74, of May 6, 1930; Act No. 83, of May 6, 1931; Act No. 84, of May 7, 1931; Act No. 89 of May 11, 1931; Act No. 18, of April 25, 1932; Act No. 11, of July 21, 1932; Joint Resolution No. 13, of April 18, 1933; Act No. 11, of August 22, 1933, and Act No. 108, of May 15, 1936, is hereby amended to read as follows:

"7. Matches: On matches, whether sulphur, safety, friction, or fuses, or by whatever name known, sold, manufactured, transported, transferred, used, or consumed in, or brought into, Puerto Rico in boxes with wooden shucks, containing not less than twenty-five (25) nor more than fifty (50) matches per box, there shall be levied and collected an excise tax as follows:

"(a) Matches having uncolored square sticks, thirty (30) cents a gross of one hundred and forty-four boxes;

"(b) Matches having colored, fancy square sticks, thirty-six (36) cents per gross of one hundred and forty-four boxes;

"(c) Matches having uncolored round sticks, ten (10) cents a gross of one hundred and forty-four boxes;

"(d) Matches having colored, fancy round sticks, fifteen (15) cents a gross of one hundred and forty-four boxes.

"When the matches are in boxes with other than wooden outers or shucks, containing not less than twenty-five (25) matches nor more than fifty (50) matches per box, there shall be levied and collected an excise tax of thirty-six (36) cents a gross of one hundred and forty-four boxes; when the box contains less than twenty-five (25) matches or more than fifty (50) matches there shall be levied and collected an excise tax of six (6) cents on each thousand matches or fraction of a thousand.

"On paper or cardboard matches in books of twenty (20) matches each, there shall be levied and collected an excise tax of five (5) cents on each thousand matches or fraction of a thousand. Books containing more than twenty (20) matches or less than twenty (20) matches, shall pay an

excise tax of six (6) cents on each thousand matches or fraction of a thousand.

"On wooden matches sold in the form of books, there shall be levied and collected an excise tax of six (6) cents on each thousand matches or fraction of a thousand.

"On sperm or wax matches there shall be levied and collected an excise tax of five (5) cents on each thousand matches or fraction of a thousand." * * *

Act No. 85, of the Legislature of Puerto Rico, approved August 20, 1925 (Laws of 1925, p. 585):

Section 108. If any provision of this Act or the application thereof to any person or circumstances be declared invalid, the remainder of the Act and the application of said provisions to other persons or circumstances shall not be affected.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 679

SAN JUAN TRADING CO., INC.,
Petitioner,

vs.

MANUEL V. DOMENECH, Treasurer of Puerto Rico,
Respondent.

SUGGESTIONS OF RESPONDENT, THE TREASURER OF PUERTO RICO, IN OPPOSITION TO THE PETITION FOR CERTIORARI IN THIS CASE

STATEMENT

This is, in effect, a cross-petition by the San Juan Trading Co., Inc., the present Petitioner, upon the same judgment of the Circuit Court of Appeals upon which the present Respondent's, the Treasurer of Puerto Rico's, original petition for certiorari, now pending here, is based [No. 648 at the present term of this Court, *Manuel V. Domenech, Treasurer, Petitioner,* vs. *San Juan Trading Co., Inc., Respondent.*

The facts are stated in our petition for certiorari in that case, No. 648 (pp. 1-3, 3-6).

As there stated (p. 3):

> "On a subsidiary question presented, all three of the judges of the Circuit Court of Appeals agree with the District Court that any invalidity of the greater rate of tax here involved extends only to the excess over the amount of the tax rate on other matches, and does not invalidate the entire tax as the respondent claims it does, but only the excess rate."

The present petition [*in effect, cross-petition, as above stated,* to No. 648] of the San Juan Trading Company is directed solely to the portion of the decision of the Circuit Court of Appeals relating to that subsidiary question.

OPINION OF THE CIRCUIT COURT OF APPEALS

That part of the prevailing majority opinion of the Circuit Court of Appeals dealing with the question here involved is the last five paragraphs of JUDGE MAHONEY'S opinion (R. 57-59; 114 F. (2d) 969, at p. 975).

STATUTES

The pertinent statutes are in Appendix I to our original petition for certiorari on behalf of the Treasurer of Puerto Rico in case No. 648 (pp. 41-54).

OPINIONS OF THE COURTS BELOW

The opinion of the District Court of the United States for the District of Puerto Rico (R. 18-34) is not officially reported. On the question here involved the District Court held against the petitioner (R. 32-34), on substantially the same ground as the Circuit Court of Appeals on this particular question.

The opinion of the Circuit Court of Appeals (three separate opinions by the three judges, but all agreeing as to the particular question here involved) is reported in 114 F. (2d) 969, 975, as above stated.

JURISDICTION

This Court appears to have jurisdiction here under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

QUESTION PRESENTED

As above stated the sole question here presented is of the correctness of the decision of the Circuit Court of Appeals,—in agreement on this question with the District Court,—upon the subsidiary question first above stated.

The Treasurer of Puerto Rico, the respondent here, be-

lieves that, on this subsidiary question, the decision of the lower courts was correct; and that, therefore, this present cross-petition [*in effect, against our petition in* No. 648] of the San Juan Trading Company, should be denied.

RESPONDENT TREASURER'S POSITION

SAN JUAN TRADING COMPANY'S ADMISSION

The San Juan Trading Co. in its petition in the present case *expressly admits* (p. 17):

> "If the only objection against the statute, as regards the square stick matches involved in this suit, had been the aforementioned discriminatory assessment in favor of round stick matches, the construction adopted by both courts would be fair, reasonable and within the legislative intention to tax them at least as much as it could constitutionally do—*Singer Sewing Machine Co.* v. *Brickell*, 233 U. S. 304, 52 L. Ed. 272, and besides precedent would have the added merit of reason and reliance on substance rather than on form. * * *
>
> "But the challenged statute, as found both by the District Court (R. 24) and by the Circuit Court of Appeals (R. 49), had left untaxed uncolored square or round stick matches packed in wooden boxes containing less than 25 or more than 50 matches per box and if the petitioner is entitled to be taxed at no higher rate than are those in like circumstances as held by the Circuit Court of Appeals (R. 58), the square stick matches involved in this action should have been also left untaxed, because other square or round stick matches, as above set forth, were left without any tax at all."

That appears to be the whole basis of the San Juan Trading Company petition in the present case **BUT** as is pointed out in our brief for the Treasurer of Puerto Rico in case No. 648 in reply to the "Suggestions" of the San Juan Trading Co. as respondent in opposition in that case [*"Brief for Petitioner in Reply to 'Suggestions' in Opposition"*, Case No. 648, "III", pp. 3-5], **it is wholly im-**

material "that the statute here in question omitted to tax matches packed in boxes with wooden outers or shucks, containing less than twenty-five (25) matches or more than fifty (50) matches in the box".

As there pointed out, the provision in section 2 of the Organic Act for Puerto Rico, "That the rule of taxation shall be uniform", *does not impose any iron rule of universality* in taxation. The Legislature was therefore not required to tax unusual, practically non-commercial, forms of packages.

There is no suggestion anywhere, either in the complaint or in any of the briefs on behalf of the San Juan Trading Co. in this case, that the omission to tax these non-commercial forms of packages constituted any discrimination whatever against the San Juan Trading Co., or against the "square" matches imported by it, nor indicated any hostility to anyone or to any type of match. So far as this omission went, it applied to the "square" match, equally with the "round" match. The omission was therefore clearly within the powers of the Legislature.

Without here repeating what is said on this point in our reply brief, *supra*, in case No. 648 ["III", above, pp. 3-5], reference is here made to it.

It follows, therefore, *on the San Juan Trading Co.'s own admission* above quoted (*ante*, p. 3), that the decisions of the lower courts on this subsidiary question in the case were correct, and that the present petition for certiorari in this case should be denied.

Respectfully submitted,

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